STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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August 20, 2001

Hon. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 Twelfth St., S.W.
Room TW-A325
Washington, D.C. 20554

Re: Comments of the New York State Department of Public Service on Notice of Proposed Rulemaking in CC Docket No. 01-92, Developing a Unified Intercarrier Compensation Regime

Dear Secretary Salas:

The New York State Department of Public Service ("NYDPS") submits these comments in response to the Federal Communication Commission's ("Commission") Notice of Proposed Rulemaking ("NPRM") released April 27, 2001 in the above-captioned proceeding. The Commission seeks comments on proposals to establish a "unified" intercarrier compensation scheme based on "bill and keep."[1] While there may be some merit to establishing a unified intercarrier compensation scheme, we do not support mandating "bill and keep" as the default regulatory outcome when interconnecting parties do not agree on compensation terms.

The Commission posits that certain existing intercarrier compensation schemes, particularly reciprocal compensation between incumbent and competitive local exchange carriers (ILECs and CLECs) and access charges imposed by LECs on interexchange carriers (IXCs), produce economically inefficient and/or anti-competitive results. Specifically, it expresses concern about the possibility that some CLECs may be enjoying excess profits from reciprocal compensation payments received for terminating calls to internet service providers (ISPs) and that both ILECs and CLECs may disadvantage IXCs through excessive terminating access charges. Although the Commission has already established rules that will reduce (and to some

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[1] "Bill and Keep" is defined in the NPRM as "a mechanism in which the called party's carrier is not allowed to recover any of the cost of the called party's loop or local switch from an interconnecting carrier." (NPRM, footnote 10)

extent standardize) these intercarrier termination charges over the next few years, it now proposes to solve these "problems" by setting those terminating charges at zero.[2] It proposes to eliminate such intercarrier payments and instead require carriers to recover the costs of terminating such calls from their own customers. Several concerns prevent us from supporting a move to mandatory "bill and keep."

First, such a change in the LECs' wholesale price structures likely will produce undesirable effects on their retail rates. The probable result will be higher monthly subscription charges (higher local rates, higher federal subscriber line charges, or both), making them less affordable, less comparable between rural and urban areas, and less conducive to universal service. Alternatively, LECs may seek to charge their customers per minute or per call for delivering calls. This would be a dramatic change from our long established custom of paying to place, but not to receive, calls. We believe this would be most unwelcome by the vast majority of the population. In either case, these unappealing impacts on retail rate levels and structures are unwarranted to solve the "problems" cited by the Commission.

Second, "bill and keep" will enhance CLECs' incentives to "cream skim" by serving few customers that originate large volumes of traffic, simply reversing the incentive produced by overly high terminating charges to serve a few customers that receive large volumes of calls. A carrier that can use another's network for free to terminate calls will have little incentive to build its own network and instead will be inclined to build a small network serving few customers who place many calls. Even the competitor that chooses to serve customers using the ILEC's unbundled network elements (UNEs), rather than by building anew, will be less apt to serve a wide spectrum of customers as doing so will increase the size and cost (through UNE rates) of "its" network. Hence, "bill and keep" will promote neither infrastructure development nor broad-based competition.

The Commission has already taken steps toward unification of intercarrier compensation mechanisms that may provide appropriate economic signals through more efficient prices levels. It should allow the market to adjust to these changes before determining that further regulatory intervention is necessary, especially an intervention as drastic and unpromising as mandatory "bill and keep."

Respectfully submitted,

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[2] See FCC 00-XXX ("CALLS Order"), FCC 01-131 ("ISP Intercarrier Compensation Order) and FCC 01-146 ("CLEC Access Charge Order). The instant "bill and keep" scheme is proposed for the follow-on for these schemes.